

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FUND TEXAS CHOICE, et al.,

Plaintiffs,

v.

SUSAN R. DESKI, et al.,

Defendants.

§
§
§
§
§
§
§
§

1:22-CV-859-RP

ORDER

Before the Court is Defendants Ashley Maxwell, Zach Maxwell, Mistie Sharp, Shannon D. Thomason, and Sadie Weldon’s (collectively, the “SB 8 Defendants”) Motion for Extension of Time, (Dkt. 210), and Motion to Stay, (Dkt. 212). In their requests, the SB 8 Defendants ask the Court to extend their response deadline to Plaintiffs’ motion for summary judgment, (Dkt. 209), until the Court has ruled on their motion to dismiss for improper joinder and lack of venue, (Dkt. 167).

Although the SB 8 Defendants do not invoke any federal rule, their request is substantively identical to a Rule 56(d) request for relief. Under Rule 56(d), a nonmoving party may request that the Court defer consideration of a motion for summary judgment if the party “cannot present facts essential to justify its opposition.” Fed. R. Civ. P. 56(d). The SB Defendants’ motions do exactly this, stating that they “are entitled to know this Court’s views on the venue issues before responding to the plaintiffs’ motion for summary judgment” and that “the SB 8 Defendants intend to contest the plaintiffs’ proof of venue when responding to their motion for summary judgment.” (Mot., Dkt. 210). The motion to stay cites the fact that “the plaintiffs have not responded to or answered any of the SB 8 defendants’ outstanding discovery requests.” (Mot., Dkt. 212). The motions, in other

words, state that the SB 8 Defendants lack sufficient information to respond and request that the Court defer consideration. Accordingly, they fall under Rule 56(d).

However, Rule 56(d) requires a party to submit “by affidavit or declaration” the specified reasons why they cannot timely respond to a motion for summary judgment. *See Cerveny v. Aventis, Inc.*, 855 F.3d 1091 (10th Cir. 2017) (denying Rule 56(d) relief based on insufficient affidavit). The SB 8 Defendants have not done so. Neither motion contains an affidavit or declaration. (*See* Mots., Dkts. 210, 212). Accordingly, the motions for extensions of time are denied without prejudice to refiling.

IT IS ORDERED that the motion for extensions of time, (Dkt. 210), and motion to stay, (Dkt. 212), are **DENIED WITHOUT PREJUDICE**.

SIGNED on September 25, 2023.

A handwritten signature in blue ink, appearing to read 'Robert Pitman', is written above a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE